

REMARKS

This Amendment is being filed under 37 C.F.R. §1.116 governing Amendment After Final Rejection. This Amendment is appropriate for entry under Rule 116, since it does not raise new issues and places the application in allowable condition and/or places the application in better condition for appeal.

Claim 1 is amended. Claims 2, 4, 12, 14, 15, and 17 have been previously cancelled. Upon entry of the amendment, claims 1, 3, 5, 6, 13, 16, and 18 are presented for reconsideration by the Examiner.

Amendment to Claim 1, Fully Supported By Application as Filed

Applicants note that the amendment to claim 1 is fully support by the application as filed and does not raise the issue of new matter. For example, the Examiner's attention is respectfully drawn to page 4, lines 22-26; page 6, lines 31-34; and page 7, lines 1-2. Applicants further note that the amendment to claim 1 requires only cursory review by the Examiner and does not present new issues requiring further consideration or search. As such, the Applicants request that the Examiner enter the amendment of claim 1 and allow all claims pending in the present case.

Claim Rejections 35 U.S.C. §102

Claim 1, 3, 5 and 13 have been rejected under 35 U.S.C. §102 as being anticipated by United States Patent No. 5,476,093 to Lankinen.

Claim 1 has been amended. The Lankinen reference fails to disclose a piston pump comprising a plunger received in a pump cylinder and a spring so that air is drawn into the cylinder when the plunger is withdrawn therefrom against the bias of the spring. In contrast, Lankinen is directed toward a device which requires an "intense" air flow. For example, at column 7, lines 14-55, Lankinen requires that an air flow be intense enough to produce turbulence. Lankinen further states that "[w]ith more intense air flow the pulverization effect of a device as shown in FIGS. 6a-6c can be improved." Lankinen, lines 49-50. Lankinen clearly is not concerned with providing the airflow of repeatable volume and velocity to the drug dosing device with a piston pump comprising a plunger received

in a pump cylinder and a spring so that air is drawn into the cylinder when the plunger is withdrawn therefrom against the bias of the spring. Lankinen clearly discloses a device which provides an uncontrollable blast of air without consideration of repeatable volume or velocity of the air. As such, a proper 35 U.S.C §102 rejection cannot be made since at least these elements are not present in Lankinen.

Rejection of Claims 3, 5 and 13

Claims 3, 5 and 13 depend directly on claim 1 and are patentable for at least the reasons stated above with regard to amended claim 1.

Claimed Invention is Non-Obvious Under a Proper 35 U.S.C. §103 Analysis

The claimed invention is additionally non-obvious with regard to Lankinen since there is at the minimum no suggestion or motivation present in the teaching or disclosure of Lankinen, or within the knowledge of one of ordinary skill in the art as evidenced by, at least, the references cited in the Office Action, to do what the Applicants have done in the claimed invention. For example, at a minimum Lankinen does not teach or suggest a device which includes providing the airflow of repeatable volume and velocity to the drug dosing device with a piston pump comprising a plunger received in a pump cylinder and a spring so that air is drawn into the cylinder when the plunger is withdrawn therefrom against the bias of the spring.

The Applicants note that as thoroughly discussed in a recent court holding:

"...the essential factual evidence on the issue of obviousness is set forth in Graham v. John Deere Co., 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966) and extensive ensuing precedent. The patent examination process centers on prior art and the analysis thereof. When patentability turns on the question of obviousness, the search for and analysis of the prior art includes evidence relevant to the finding of whether there is a teaching, motivation, or suggestion to select and combine the references relied on as evidence of obviousness. See, e.g., McGinley v. Franklin Sports, Inc., 262 F.3d 1339, 1351-52, 60 USPQ2d 1001, 1008 (Fed. Cir. 2001) ("the central question is whether there is reason to combine [the] references," a question of fact drawing on the Graham factors)." In re Lee, 61 USPQ2d, 1430 (Fed. Cir. 2002)

Such a rigorous examination required by law clearly would find the claimed invention non-obvious based on at least a study of the problem to be solved by the Applicants and the functionality of the claimed invention.

Rejections Under 35 U.S.C. §103

Claims 6, 16, and 18 have been rejected under 35 U.S.C. 103 as "being unpatentable over Lankinen in view of Patton et al. (USPT 5,458,135)".


The rejection of claims 6, 16, and 18 is improper for at least the reason that the Lankinen reference does not teach or suggest a piston pump comprising a plunger received in a pump cylinder and a spring so that air is drawn into the cylinder when the plunger is withdrawn therefrom against the bias of the spring. As such, the cited references when combined do not teach or suggest all the claim limitations, and a proper 35 U.S.C §103 rejection cannot be made.

In summary, Applicants have addressed each of the rejections within the present Office Action by the above Remarks. It is believed the Application now stands in condition for allowance and a prompt favorable action thereon is earnestly solicited.

Respectfully submitted,

QUENTIN J. HARMER et al

Date: 12 - 13 - 2004

By: 
Guy D. Yale
Registration No. 29,125
Alix, Yale & Ristas, LLP
Attorney for Applicant

750 Main Street
Hartford, CT 06103-2721
(860) 527-9211
Our Ref: VENNER/321/PC/US
Enclosures

G:\AYR saved docs\Filing Docs\Venner\VENNER.321.PC.US.respOA12.13.04.doc